

FIRST REGULAR SESSION

SENATE BILL NO. 687

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

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2542S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 143.441, 144.605, and 147.010, RSMo, and to enact in lieu thereof three new sections relating to nexus for taxation purposes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 143.441, 144.605, and 147.010, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 143.441,
3 144.605, and 147.010, to read as follows:

143.441. 1. The term "corporation" means every corporation, association,
2 joint stock company and joint stock association organized, authorized or existing
3 under the laws of this state and includes:

4 (1) Every corporation, association, joint stock company, and joint stock
5 association organized, authorized, or existing under the laws of this state, and
6 every corporation, association, joint stock company, and joint stock association,
7 licensed to do business in this state, or doing business in this state, and not
8 organized, authorized, or existing under the laws of this state, or by any receiver
9 in charge of the property of any such corporation, association, joint stock company
10 or joint stock association;

11 (2) Every railroad corporation or receiver in charge of the property thereof
12 which operates over rails owned or leased by it and every corporation operating
13 any buslines, trucklines, airlines, or other forms of transportation operating over
14 fixed routes owned, leased, or used by it extending from this state to another
15 state or states;

16 (3) Every corporation, or receiver in charge of the property thereof, which

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 owns or operates a bridge between this and any other state; and

18 (4) Every corporation, or receiver in charge of the property thereof, which
19 operates a telephone line or lines extending from this state to another state or
20 states or a telegraph line or lines extending from this state to another state or
21 states.

22 2. The tax on corporations provided in subsection 1 of section 143.431 and
23 section 143.071 shall not apply to:

24 (1) A corporation which by reason of its purposes and activities is exempt
25 from federal income tax. The preceding sentence shall not apply to unrelated
26 business taxable income and other income on which chapter 1 of the Internal
27 Revenue Code imposes the federal income tax or any other tax measured by
28 income;

29 (2) An express company which pays an annual tax on its gross receipts in
30 this state;

31 (3) An insurance company which pays an annual tax on its gross premium
32 receipts in this state;

33 (4) A Missouri mutual or an extended Missouri mutual insurance company
34 organized under chapter 380, RSMo; and

35 (5) Any other corporation that is exempt from Missouri income taxation
36 under the laws of Missouri or the laws of the United States.

37 **3. Notwithstanding any other provision of this chapter to the**
38 **contrary, whether a corporation has substantial nexus with this state**
39 **for income tax purposes, is determined without regard to whether the**
40 **corporation:**

41 (1) **Owens or utilizes a distribution facility within this state;**

42 (2) **Owens or leases property at a distribution facility within this**
43 **state that is used at, or distributed from, that facility; or**

44 (3) **Sells property shipped or distributed from a distribution**
45 **facility within this state.**

144.605. The following words and phrases as used in sections 144.600 to
2 144.745 mean and include:

3 (1) "Calendar quarter", the period of three consecutive calendar months
4 ending on March thirty-first, June thirtieth, September thirtieth or December
5 thirty-first;

6 (2) "Engages in business activities within this state" includes:

7 (a) [Purposefully or systematically exploiting the market provided by this

8 state by any media-assisted, media-facilitated, or media-solicited means,
9 including, but not limited to, direct mail advertising, distribution of catalogs,
10 computer-assisted shopping, telephone, television, radio, or other electronic
11 media, or magazine or newspaper advertisements, or other media; or

12 (b) Being owned or controlled by the same interests which own or control
13 any seller engaged in the same or similar line of business in this state; or

14 (c)] Maintaining or having a franchisee or licensee operating under the
15 seller's trade name in this state if the franchisee or licensee is required to collect
16 sales tax pursuant to sections 144.010 to 144.525; or

17 [(d)] **(b)** Soliciting sales or taking orders by sales agents or traveling
18 representatives **in this state;**

19 **(c) Notwithstanding any other provision in this chapter to the**
20 **contrary, whether a person engages in business activities within this**
21 **state and whether the person has substantial nexus with this state will**
22 **be determined without regard to whether the person:**

23 **a. Owns or utilizes a distribution facility within this state;**

24 **b. Owns or leases property at a distribution facility within this**
25 **state that is used at, or distributed from, that facility; or**

26 **c. Sells property shipped or distributed from a distribution**
27 **facility within this state;**

28 (3) "Maintains a place of business in this state" includes **directly**
29 maintaining, occupying, or using, [permanently or temporarily, directly or
30 indirectly, or through a subsidiary, or agent, by whatever name called, an office,
31 place of distribution, sales or sample room or place] **an office**, warehouse, or
32 storage place, or other place of business **in this state other than a**
33 **distribution facility;**

34 (4) "Person", any individual, firm, copartnership, joint venture,
35 association, corporation, municipal or private, and whether organized for profit
36 or not, state, county, political subdivision, state department, commission, board,
37 bureau or agency, except the state transportation department, estate, trust,
38 business trust, receiver or trustee appointed by the state or federal court,
39 syndicate, or any other group or combination acting as a unit, and the plural as
40 well as the singular number;

41 (5) "Purchase", the acquisition of the ownership of, or title to, tangible
42 personal property, through a sale, as defined herein, for the purpose of storage,
43 use or consumption in this state;

44 (6) "Purchaser", any person who is the recipient for a valuable
45 consideration of any sale of tangible personal property acquired for use, storage
46 or consumption in this state;

47 (7) "Sale", any transfer, barter or exchange of the title or ownership of
48 tangible personal property, or the right to use, store or consume the same, for a
49 consideration paid or to be paid, and any transaction whether called leases,
50 rentals, bailments, loans, conditional sales or otherwise, and notwithstanding
51 that the title or possession of the property or both is retained for security. For
52 the purpose of this law the place of delivery of the property to the purchaser,
53 user, storer or consumer is deemed to be the place of sale, whether the delivery
54 be by the vendor or by common carriers, private contractors, mails, express,
55 agents, salesmen, solicitors, hawkers, representatives, consignors, peddlers,
56 canvassers or otherwise;

57 (8) "Sales price", the consideration including the charges for services,
58 except charges incident to the extension of credit, paid or given, or contracted to
59 be paid or given, by the purchaser to the vendor for the tangible personal
60 property, including any services that are a part of the sale, valued in money,
61 whether paid in money or otherwise, and any amount for which credit is given to
62 the purchaser by the vendor, without any deduction therefrom on account of the
63 cost of the property sold, the cost of materials used, labor or service cost, losses
64 or any other expenses whatsoever, except that cash discounts allowed and taken
65 on sales shall not be included and "sales price" shall not include the amount
66 charged for property returned by customers upon rescission of the contract of
67 sales when the entire amount charged therefor is refunded either in cash or credit
68 or the amount charged for labor or services rendered in installing or applying the
69 property sold, the use, storage or consumption of which is taxable pursuant to
70 sections 144.600 to 144.745. In determining the amount of tax due pursuant to
71 sections 144.600 to 144.745, any charge incident to the extension of credit shall
72 be specifically exempted;

73 (9) "Selling agent", every person acting as a representative of a principal,
74 when such principal is not registered with the director of revenue of the state of
75 Missouri for the collection of the taxes imposed pursuant to sections 144.010 to
76 144.525 or sections 144.600 to 144.745 and who receives compensation by reason
77 of the sale of tangible personal property of the principal, if such property is to be
78 stored, used, or consumed in this state;

79 (10) "Storage", any keeping or retention in this state of tangible personal

80 property purchased from a vendor, except property for sale or property that is
81 temporarily kept or retained in this state for subsequent use outside the state;

82 (11) "Tangible personal property", all items subject to the Missouri sales
83 tax as provided in subdivisions (1) and (3) of section 144.020;

84 (12) "Taxpayer", any person remitting the tax or who should remit the tax
85 levied by sections 144.600 to 144.745;

86 (13) "Use", the exercise of any right or power over tangible personal
87 property incident to the ownership or control of that property, except that it does
88 not include the temporary storage of property in this state for subsequent use
89 outside the state, or the sale of the property in the regular course of business;

90 (14) "Vendor", every person engaged in making sales of tangible personal
91 property by mail order, by advertising, by agent or peddling tangible personal
92 property, soliciting or taking orders for sales of tangible personal property, for
93 storage, use or consumption in this state, all salesmen, solicitors, hawkers,
94 representatives, consignees, peddlers or canvassers, as agents of the dealers,
95 distributors, consignors, supervisors, principals or employers under whom they
96 operate or from whom they obtain the tangible personal property sold by them,
97 and every person who maintains a place of business in this state, maintains a
98 stock of goods in this state, or engages in business activities within this state and
99 every person who engages in this state in the business of acting as a selling agent
100 for persons not otherwise vendors as defined in this subdivision. Irrespective of
101 whether they are making sales on their own behalf or on behalf of the dealers,
102 distributors, consignors, supervisors, principals or employers, they must be
103 regarded as vendors and the dealers, distributors, consignors, supervisors,
104 principals or employers must be regarded as vendors for the purposes of sections
105 144.600 to 144.745. A person shall not be considered a vendor for the purposes
106 of sections 144.600 to 144.745 if all of the following apply:

107 (a) The person's total gross receipts did not exceed five hundred thousand
108 dollars in this state, or twelve and one-half million dollars in the entire United
109 States, in the immediately preceding calendar year;

110 (b) The person maintains no place of business in this state; and

111 (c) The person has no selling agents in this state.

147.010. 1. For the transitional year defined in subsection 4 of this
2 section and each taxable year beginning on or after January 1, 1980, but before
3 January 1, 2000, every corporation organized pursuant to or subject to chapter
4 351, RSMo, or pursuant to any other law of this state shall, in addition to all

5 other fees and taxes now required or paid, pay an annual franchise tax to the
6 state of Missouri equal to one-twentieth of one percent of the par value of its
7 outstanding shares and surplus if its outstanding shares and surplus exceed two
8 hundred thousand dollars, or if the outstanding shares of such corporation or any
9 part thereof consist of shares without par value, then, in that event, for the
10 purpose contained in this section, such shares shall be considered as having a
11 value of five dollars per share unless the actual value of such shares exceeds five
12 dollars per share, in which case the tax shall be levied and collected on the actual
13 value and the surplus if the actual value and the surplus exceed two hundred
14 thousand dollars. If such corporation employs a part of its outstanding shares in
15 business in another state or country, then such corporation shall pay an annual
16 franchise tax equal to one-twentieth of one percent of its outstanding shares and
17 surplus employed in this state if its outstanding shares and surplus employed in
18 this state two hundred thousand dollars, and for the purposes of sections 147.010
19 to 147.120, such corporation shall be deemed to have employed in this state that
20 proportion of its entire outstanding shares and surplus that its property and
21 assets employed in this state bears to all its property and assets wherever
22 located. A foreign corporation engaged in business in this state, whether
23 pursuant to a certificate of authority issued pursuant to chapter 351, RSMo, or
24 not, shall be subject to this section. Any corporation whose outstanding shares
25 and surplus as calculated in this subsection does not exceed two hundred
26 thousand dollars shall state that fact on the annual report form prescribed by the
27 secretary of state. For all taxable years beginning on or after January 1, 2000,
28 the annual franchise tax shall be equal to one-thirtieth of one percent of the
29 corporation's outstanding shares and surplus if the outstanding shares and
30 surplus exceed one million dollars. Any corporation whose outstanding shares
31 and surplus do not exceed one million dollars shall state that fact on the annual
32 report form prescribed by the director of revenue.

33 2. Sections 147.010 to 147.120 shall not apply to corporations not
34 organized for profit, nor to corporations organized pursuant to the provisions of
35 chapter 349, RSMo, nor to express companies, which now pay an annual tax on
36 their gross receipts in this state, nor to insurance companies, which pay an
37 annual tax on their premium receipts in this state, nor to state, district, county,
38 town and farmers' mutual companies now organized or that may be hereafter
39 organized pursuant to any of the laws of this state, organized for the sole purpose
40 of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and

41 mutual automobile insurance and for the purpose of paying any loss incurred by
42 any member by assessment, nor to any mutual insurance corporation not having
43 shares, nor to a company or association organized to transact business of life or
44 accident insurance on the assessment plan for the purpose of mutual protection
45 and benefit to its members and the payment of stipulated sums of moneys to the
46 family, heirs, executors, administrators or assigns of the deceased member, nor
47 to foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or
48 other kind of insurance company of whatever nature coming within the provisions
49 of section 147.050 and doing business in this state, nor to savings and loan
50 associations and domestic and foreign regulated investment companies as defined
51 by Section 170 of the Act of Congress commonly known as the "Revenue Act of
52 1942", nor to electric and telephone corporations organized pursuant to chapter
53 351, RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have been
54 declared tax exempt organizations pursuant to Section 501(c) of the Internal
55 Revenue Code of 1986, nor for taxable years beginning after December 31, 1986,
56 to banking institutions subject to the annual franchise tax imposed by sections
57 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the
58 individual depositor left for safekeeping and shall not be considered in computing
59 the amount of tax collectible pursuant to the provisions of sections 147.010 to
60 147.120.

61 3. A corporation's "taxable year" for purposes of sections 147.010 to
62 147.120 shall be its taxable year as provided in section 143.271, RSMo.

63 4. A corporation's "transitional year" for the purposes of sections 147.010
64 to 147.120 shall be its taxable year which includes parts of each of the years 1979
65 and 1980.

66 5. The franchise tax payable for a corporation's transitional year shall be
67 computed by multiplying the amount otherwise due for that year by a fraction,
68 the numerator of which is the number of months between January 1, 1980, and
69 the end of the taxable year and the denominator of which is twelve. The
70 franchise tax payable, if a corporation's taxable year is changed as provided in
71 section 143.271, RSMo, shall be similarly computed pursuant to regulations
72 prescribed by the director of revenue.

73 6. All franchise reports and franchise taxes shall be returned to the
74 director of revenue. All checks and drafts remitted for payment of franchise taxes
75 shall be made payable to the director of revenue.

76 7. Pursuant to section 32.057, RSMo, the director of revenue shall

77 maintain the confidentiality of all franchise tax reports returned to the director.
78 8. The director of the department of revenue shall honor all existing
79 agreements between taxpayers and the director of the department of revenue.

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